

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12259 of 5501 Connecticut Avenue Associates, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 3101.411, to allow the construction of fifteen (15) accessory parking spaces in the R-1-B District at 3725 Livingston Street, N. W., (part of Lot 69, Square 1868) to serve the customers of the five (5) existing retail establishment at 5501-11 Connecticut Avenue, N. W.

HEARING DATE: January 19, 1977

DECISION DATE: March 8, 1977

DISPOSITION: Application GRANTED with conditions by a vote of 3-1 (Richard L. Stanton, William F. McIntosh and Leonard L. McCants, Esq., to grant, Lilla Burt Cummings, Esq., to deny)

FINAL DATE OF ORDER: May 31, 1977

ORDER

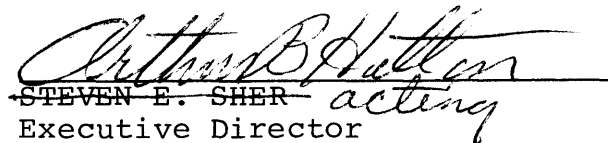
Upon consideration of the Opposition's (Upper Connecticut Avenue Betterment Association) Motion for Reconsideration dated June 10, 1977 (date received by Board of Zoning Adjustment), the Board finds that the Motion fails to state an acceptable basis of error on the part of the Board to support a Motion for Reconsideration. It is therefore ORDERED that the Motion for Reconsideration be DENIED.

DECISION DATE: August 3, 1977

VOTE: 5-0 (Charles R. Norris, William F. McIntosh, Chloethiel W. Smith, Dr. Walter B. Lewis, and Leonard L. McCants)

BY ORDER OF D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY


~~STEVEN E. SHER~~ acting
Executive Director

FINAL DATE OF ORDER:

8-9-77

Before the Board of Zoning Adjustment, D. C.

Application No. 12259, of 5501 Connecticut Avenue Associates, pursuant to Sub-section 8207.2 of the Zoning Regulations for a special exception, under Sub-section 3101.411, to allow the construction of fifteen (15) accessory parking spaces in the R-1-B District at 3725 Livingston Street, N. W., (part of Lot 69, Square 1868) to serve the customers of the five (5) existing retail establishments at 5501-11 Connecticut Avenue, N. W.

HEARING DATE January 19, 1977

DECISION DATE: March 8, 1977

FINDINGS OF FACT:

1. The subject property is part of Lot 69, Square 1868. The western portion of the lot is in the C-1 Strip District. The eastern portion, upon which the applicant proposes to construct the parking facility, is located in the R-1-B District.

2. The commercial portion of the property is improved by a two-story building. The lower story is occupied by five (5) retail stores. The upper story is occupied by offices.

3. The retail stores are occupied by Circle Liquors, Inc., The Record Man, a retail record store, Abbey Carpets, Audio Expo, Inc., a retail electronics and television store, and Colorfax Photo, Inc. These stores front on Connecticut Avenue, N. W.

4. Contiguous to the rear of the building, located in the C-1 portion of the property, is a private driveway, leading from Livingston Street on the south to six (6) parking spaces. This driveway area will provide access to the proposed spaces, thereby becoming a part of the accessory parking area.

5. Parking and access to the second-story office space are provided north of the property by an elevated parking lot and entrance, which are approximately level with the second story.

6. The subject portion of the property is unimproved and is located immediately adjacent to the existing driveway and within two hundred (200) feet of the stores. The subject portion of the property begins level with the private driveway and eventually rises approximately twenty feet in grade to the eastern boundary. The proposed parking area itself is level and at the same grade as the C-1 portion of the lot.

7. A single-family detached dwelling is located on the property abutting the eastern boundary of Lot 69. This dwelling is at an elevation approximately twenty (20) feet above the proposed parking area.

8. Public parking in the immediate vicinity of the five retail stores is limited. The curb lane of Connecticut Avenue fronting the stores is restricted by metered parking, by a complete prohibition during the evening rush hours, and by a loading zone. The adjacent area of Livingston Street, N. W. is restricted by a loading zone, by a fire hydrant, and by metered parking.

9. The six private parking spaces in the rear are inadequate to serve the needs of the retail stores. They also create a traffic hazard, because cars can only back out of the spaces onto Livingston Street.

10. As a result of the limited parking, patrons of the retail establishments frequently park illegally on the unimproved lot, on the sidewalk, in the loading zone and in front of the fire hydrant. Delivery vehicles serving the establishments often double park while making deliveries and thereby further impede traffic.

11. This experience demonstrates that the retail stores have generated a degree of traffic congestion which is not found in the records of prior applications, No. 10875 and No. 11509, of which the Board takes official notice. Because of this congestion, there exists a need for parking which is accessory to the retail stores.

12. Applicant proposes to construct an open, fifteen (15) space parking facility on the same lot as the improvement. There is insufficient space on the strip C-1 portion of the lot to permit parking beyond the existing six (6) spaces. It is economically impracticable to construct additional parking beneath the existing improvements, because the sub-soil consists of rock, which would require blasting prior to excavation. Because of the existing improvement, there is no significant area available for construction above grade and no practical way to add accessory parking to one improvement.

13. Applicant proposes to construct the parking facility on the R-1-B portion of the lot. The proposed facility provides for a twenty-five foot buffer zone between the parking and the adjacent residential property. The entrance-exit way is more than twenty-five (25) feet from the nearest intersection.

14. The buffer zone currently contains trees and under-

growth, which applicant proposes to supplement with fast-growing evergreens and other landscaping, thereby creating both a visual barrier and sound baffling. Pursuant to the Board's directive of February 10, 1977, the applicant submitted a revised landscaping plan. This plan depicts thirty-three arbor-vitae trees, six (6) white fir trees, and thirty-two (32) Japanese Yew trees, arranged so as to screen the parking area to the south, east, and north. The width of the buffer zone, together with the topography of the site and the landscape screening which exists and is to be required are adequate to prevent adverse impact on adjacent residential property.

15. Pursuant to the Board's directive of February 10, 1977, the applicant submitted a revised parking plan. The revised plan eliminates the existing six (6) spaces. It also re-alligns the angle of the spaces in the northern-most row, so that vehicles which are backing out of those spaces will back toward the east and away from the exit. This revised plan will reduce the tendency of motorists to back out of the exit.

16. Pursuant to the Board's directive of February 10, 1977 the applicant has requested the Department of Transportation to post a "right turn only" sign at the parking area's exit, thereby directing traffic toward Connecticut Avenue and away from the residential district. The intersection of Livingston and Connecticut will be the closest intersection to the exit.

17. In short, as now proposed, the additional parking spaces would create no significant likelihood of increased traffic on the residential-zoned portions of Livingston Street which are to the east of the driveway which will serve as the entrance and exit. As proposed, and with the conditions to be imposed, existing traffic congestion and unsightly conditions will be eliminated and development of objectionable conditions will not be likely.

18. The site is located within Advisory Neighborhood Commission 3-G. Its chairman testified and the ANC filed a statement of its opposition to the application. The ANC expressed concern with encroachment and traffic congestion. It recognized the need to solve the problem of traffic congestion, which is amply demonstrated by the record, but it was not clear to the ANC that the lot would aid in relieving congestion.

19. The Department of Transportation and the Municipal Planning Office recommended approval of the application.

20. In application No. 11509, filed September 14, 1973, the present applicant sought to establish a two-tier, 33 space parking facility on the same site. Twenty four of the proposed spaces would have been accessible from Livingston Street, and nine through an alley from Morrison Street, N. W. By Order dated April 10, 1975, the Board denied the application, finding, in pertinent part:

6. The Department of Highways and Traffic ***report states no objection to the use of the subject property as a parking lot, however, it did state objection to the creation of two (2) levels of parking separated by retaining wall as proposed by applicant, with access through an alley way. This objection is based upon the increase of traffic which would result in the proposed use and safety and noise problems created thereby. The report also stated that the extensive maneuvering that would be required by vehicles to enter and leave these parking spaces could delay other vehicles and cause further congestion in the alley. [Emphasis added].

7. The applicant did not introduce into evidence facts, or present testimony which would carry its burden of proof to show that it is economically impracticable or unsafe to locate such parking spaces within the principle building or on the same lot***.

8. The applicant represented to the Board that the proposed accessory parking spaces are not actually necessary.

The Board then concluded in pertinent part:

The Board is of the opinion, that because the proposed parking spaces are in an amount above that required for the principle use herein, and that the proposed access to a portion of the proposed for [sic] parking must be from a small alley which abutts [sic] residential development, that increased traffic would create an objectionable condition.

21. The Board Order dated April 10, 1975, sets out that

the applicant proposed to establish nine spaces on the portion of the lot accessible through an alley from Morrison Street, and eight spaces on the portion of the lot accessible from Livingston Street. Examination of the file in No. 11509 indicates that these figures are incorrect. Applicant's Exhibit 7 therein shows 33 spaces. By letters dated November 22, 1974 and January 15, 1975, applicant proposed to eliminate 17 spaces - all [sic] eight from the upper portion of the lot and nine from the lower portion. By letter dated January 18, 1974, the applicant's attorney had advised the Board that the applicants would be willing to accept a condition that there be no parking on the portion of the lot accessible from the public alley leading to Morrison Street.

It is apparent, however, from the Board's Order that the Board decided No. 11509 on the operative premise that there would be at least nine (9) spaces which would be reached by the alley. It is equally apparent that the threat of increased traffic on the alley was a key ground for the Board's denial of the application.

22. In Application No. 12042, filed August 21, 1975, the present applicant sought a special exception for fifteen (15) accessory parking spaces. It was proposed that all spaces would have access from Livingston Street only. On January 21, 1976, the Board, per the Chairman, determined to dismiss the application. The Board's Order, dated March 2, 1976, sets forth the following conclusion:

The Board concludes that the changes made from the modified application which was before the Board in Case No. 11509 as compared to the recent application are so minimal as to make the two applications essentially the same. The Board further concludes that the Motion to Dismiss filed with the Board is a procedural matter upon which the Chairman was eligible to rule. The Board therefore concludes that the present application is in violation of Section 5.6 of the Supplemental Rules of Practice and Procedure and hereby Orders the application dismissed. [Emphasis added.].

CONCLUSIONS OF LAW AND OPINION:

1. The elimination of the parking spaces which would require access by alley from Morrison Street is a material change from the application upon which this Board based its Order of denial in No. 11509. The demonstration herein of the need of the retail stores for accessory parking is a material difference in fact from the absence of such in No. 10875 and No. 11509.

2. The procedural decision to dismiss the application in No. 12042 did not constitute a decision by the Board that the Board decision in No. 11509 was based upon a modified application which eliminated the alley. Rather, it was predicated upon the fact that a modified proposal, which would have eliminated alley access, was part of the record before the Board in No. 11509, and rendered such a proposal essentially the same as that which was before the Board in No. 12042.

3. The finding that it is economically impracticable to locate additional parking spaces within the C-1 portion of the lot, either above or below grade, because of the existing improvement on such portion and because of the narrow C-1 strip zone fulfills the requirement of Part (c) of Sub-section 3101.411.

4. The parking spaces will not constitute an encroachment of commercial zoning on the residential zone. Sub-section 3101.411 is, in fact, intended in part, to reduce the impact of the C-1 commercial strip on nearby residential areas, by enabling this Board to provide for accessory parking for which there is a demonstrated need, but which would not be required by the schedule of Section 7202.

5. The number and layout of the parking spaces, access lanes, and entrance-exit way, the conditions imposed as to landscaping, and the topography of the site establish a design which is not likely to become objectionable to neighboring property.

6. The foregoing findings of fact and conclusions of law address the issues of encroachment and of the need for the accessory parking which were raised by ANC 3-G.

It is therefore ORDERED that the application for fifteen (15) parking spaces be and is hereby GRANTED for a period of five (5) years, subject to the following conditions:

a. Permit shall issue for a period of five (5) years, but shall be subject to renewal in the discretion of the Board upon the filing of a new appeal in the manner prescribed by the Zoning Regulations.

b. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface. Parking spaces shall be appropriately marked.

c. An eight (8) inch coping shall be erected and maintained along each side of the parking area to protect the public space and the landscaping.

d. Bumper and tire stops shall be erected and maintained for the protection of all adjoining buildings.

e. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.

f. All parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped. At the time of planting, landscaping shall be in accord with the revised landscaping plan submitted on March 3, 1977, and shall include thirty-three (33) arbor vitae trees, six feet in height at planting, six white fir trees, ten feet in height at planting, and thirty-two (32) Japanese Yew trees, two feet in height at planting. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.

g. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.

h. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.

i. The layout and number of parking spaces shall be in accord with the revised plan submitted March 3, 1977. The six existing spaces are to be eliminated, as is the eastern most space which is shown on the northern most row of the revised plan.

j. Directional arrows, as shown on the revised parking plan, will be placed on the pavements, to establish a one-way driving pattern.

k. A "Right Turn Only" sign will be placed at the exit.

VOTE: 3-1 (Motion by Richard L. Stanton to GRANT for FIVE (5) years for fifteen (15) parking spaces, seconded by William F. McIntosh and carried by a vote of 3-1 Richard L. Stanton, William F. McIntosh and Leonard L. McCants, Esq., to GRANT; Lilla Burt Cummings, Esq., to DENY).

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Arthur B. Hatton
ARTHUR B. HATTON
Executive Secretary

FINAL DATE OF ORDER: 5-31-77

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.